

March 28, 2000

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas, Secretary,  
Federal Communications Commission,  
Office of the Secretary, 445-12th Street, SW  
Federal Communications Commission  
Washington, DC 20554

RE: MM Docket No. 99-360

Dear Ms. Roman Salas:

On March 27, 2000, the Association of America's Public Television Stations submitted its Comments in the above captioned proceeding via the Electronic Comment Filing System. Attached is a copy of the confirmation APTS received. However, today it came to our attention that the filing we submitted somehow became corrupted at the Commission, so that what was a 26 page comment, cleanly formatted in Microsoft Word for PC, became an 88 page document filled with meaningless symbols and fragments of the original. Accordingly, APTS is again submitting its Comments but on paper. We ask that, pursuant to 47 C.F.R. §§1.41 and 1.46, you waive the deadline for filing comments in this case to allow our document to become part of the public record.

Sincerely,



Andrew D. Cotlar, staff attorney  
Association of America's Public Television Stations  
1350 Connecticut Ave., NW, Suite 200  
Washington, DC 20036  
202-887-1700  
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# Federal Communications Commission

## The FCC Acknowledges Receipt of Comments From ... Association of America's Public Television Stations ...and Thank You for Your Comments

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of  
Public Interest Obligations  
of TV Broadcast Licensees

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MM Docket No. 99-360  
FCC 99-390

**COMMENTS OF THE ASSOCIATION OF AMERICA'S PUBLIC TELEVISION  
STATIONS**

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March 27, 2000

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## SUMMARY

APTS submits its comments in this proceeding to set forth in the record the broad expanse of services provided by public television stations as they achieve their unique mission of serving the public interest in both the analog and digital contexts. Because public television stations exist to serve the public interest, the Commission should accommodate this unique mission and not create at this time any additional public interest obligations on public television stations beyond those already required in the analog world. In addition, APTS contends that public interest obligations should not apply to ancillary and supplementary services because by definition these services are not part of the licensee's free over-the-air broadcast service available to the general public. Lastly, APTS supports the creation of an additional reserved channel devoted to educational uses in each community. However, building and operating facilities for the channels must be sufficiently funded, and local public television stations should be given the first opportunity to operate these channels.

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In the Matter of  
Public Interest Obligations  
of TV Broadcast Licensees

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MM Docket No. 99-360

FCC 99-390

**COMMENTS OF THE ASSOCIATION OF AMERICA'S PUBLIC TELEVISION  
STATIONS**

The Association of America's Public Television Stations ("APTS") hereby submits its comments in the above captioned proceeding. APTS is a nonprofit organization whose members comprise nearly all of the nation's 352 noncommercial educational television stations. APTS represents public television stations in legislative and policy matters before the Commission, Congress, and the Executive Branch, as well as engaging in planning and research activities on behalf of its members.

APTS submits its comments in this proceeding to set forth in the record the broad expanse of services provided by public television stations as they achieve their unique mission of serving the public interest in both the analog and digital contexts. Because public television stations exist to serve the public interest, the Commission should accommodate this unique mission, as it has in the past, and not create at this time any additional public interest obligations on public television stations beyond those already required in the analog world. In addition, APTS contends that public interest obligations should not apply to ancillary and supplementary services because by definition these services are not part of the licensee's free over-the-air broadcast

service available to the general public. Lastly, APTS supports the creation of an additional reserved channel devoted to educational uses in each community. However, building and operating facilities for the channels must be sufficiently funded, and local public television stations should be given the first opportunity to operate these channels.

**I. The Unique Mission of Public Television Stations Is to Serve the Public Interest**

By statute, and pursuant to the policies established by the Commission and the Corporation for Public Broadcasting, the purpose of public television stations is to serve the public interest by providing educational and informational services to the public. Taking this mission seriously, public television stations across the nation have provided thousands of hours of programming and services to address the needs of children and to enhance political discourse. In addition, public television stations have addressed the needs of their local communities of license by providing local programming and by engaging in local partnerships. Moreover, public television stations have maintained a steadfast and unwavering commitment to address unserved and underserved audiences, as well as to make their programming accessible to persons with disabilities.

**A. The Statutory Mission of Public Television Stations, Coupled with Existing FCC Rules and CPB Policies, Ensures that Stations Serve the Public Interest and Are Responsive to Community Needs**

As Congress has recognized, the purpose of public television is to develop programming that takes “creative risks and that addresses the needs of unserved and underserved audiences, particularly children and minorities.”<sup>1</sup> It has also praised the

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<sup>1</sup> 47 U.S.C. §396(a)(6).

unique connection public television stations possess with their local communities, as well as their potential to improve the national discourse, by stating that such stations “constitute valuable local community resources for utilizing electronic media to address national concerns and solve local problems through community programs and outreach programs.”<sup>2</sup> Accordingly, Congress has concluded that it furthers the general welfare to encourage the development of public television nation-wide, because such stations are “responsive to the interests of all people both in particular localities and throughout the United States,” and strive to attain an ideal of “diversity and excellence.”<sup>3</sup>

Commission rules and CPB policies further ensure that public television stations continue to serve the public interest. For instance, according to current Commission rules, only two classes of entities may hold licenses for noncommercial educational television stations: (a) nonprofit educational organizations and (b) municipalities or political subdivisions of a state.<sup>4</sup> Licensees must show that the proposed station will be used primarily to serve the educational needs of the community, to advance educational programs and to furnish a nonprofit and noncommercial television broadcast service.<sup>5</sup>

In addition, although the Commission had determined that its formal

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<sup>2</sup> 47 U.S.C. §396(a)(8).

<sup>3</sup> 47 U.S.C. §396(a)(5).

<sup>4</sup> See 47 C.F.R. §73.621(a) and (b).

<sup>5</sup> 47 C.F.R. §73.621(a).



ascertainment requirement was no longer necessary,<sup>6</sup> other legal strictures remain that ensure that all public television stations are responsive to their communities. For instance, the Commission requires that noncommercial television applicants that are non-profit organizations must submit “evidence that officers, directors and members of the governing board are broadly representative of the educational, cultural and civic groups in the community.”<sup>7</sup>

Additional requirements regarding corporate organization and operations are imposed by federal law as a condition for the distribution of federal grants through CPB. For instance, the governing boards of public television stations must hold open meetings.<sup>8</sup> This requirement extends to any advisory body as well.<sup>9</sup> In addition all public television licensees, other than state licensees, must have a Community Advisory

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<sup>6</sup> See generally, Ascertainment of Community Problems by Noncommercial Educational Broadcast Applicants, Report & Order, FCC 76-234, 58 FCC 2d 526 (1976). Prior to 1984, public television stations had to satisfy four specific requirements designed to show that local needs had been properly ascertained and that programs to respond to those needs had been developed. The public television licensee was required to: (a) complete and place in its public file demographic data on its community of license; (b) conduct interviews with community leaders representative of all significant groups, following a checklist of leader categories; (c) conduct a general public survey, either using the traditional random sample method mandated for commercial stations, or by call-in programs or public meetings; and (d) compile, place annually in the public file, and submit with each application a list of community problems and programs designed to address these problems. See Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licensees, Report & Order, FCC 84-294, BC Docket 81-496, 98 FCC 2d 746, (1984), ¶6. In 1984 these ascertainment requirements were eliminated in light of its unnecessary costs to licensees and for other policy considerations. *Id.* at ¶16-29.

<sup>7</sup> In re Applications of WOED Pittsburgh and Cornerstone Television, Inc., Memorandum Opinion and Order, FCC 99-393, ¶ 51 (December 15, 1999), partially vacated by Order on Reconsideration, FCC 00-25 (January 28, 2000). See also FCC Form 320, Section II, Paragraph 11(a).

<sup>8</sup> 47 U.S.C. §396(k)(4).

<sup>9</sup> *Id.*

Board in order to receive CPB grants.<sup>10</sup> A licensee must undertake good faith efforts to ensure that (a) its Community Advisory Board meets at regular intervals, (b) the members of the advisory board regularly attend meetings, and (c) the composition of the advisory board is “reasonably representative of the diverse needs and interests” of the community of license.<sup>11</sup> The Communications Act details the duties of a Community Advisory Board:

The board shall be permitted to review the programming goals established by the station, the service provided by the station, and the significant policy decisions rendered by the station. The board may also be delegated any other responsibilities, as determined by the governing body of the station. The board shall advise the governing body of the station with respect to whether the programming and other policies of such station are meeting the specialized educational and cultural needs of the communities served by the station, and may make such recommendations as it considers appropriate to meet such needs.<sup>12</sup>

Therefore, unlike commercial broadcasters, public television licensees are bound by statute, Commission rules, and CPB policy to serve the public interest needs of their communities as an integral component of their educational mission. As a legal and structural matter, public television stations are intimately aware of the unique needs and interests of their communities and exist for the singular purpose of providing public service media to their communities.

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<sup>10</sup> 47 U.S.C. §396(k)(8)(A). State-affiliated public television licensees are not required to possess a Community Advisory Board because these licensees are held accountable to the community they serve through the normal democratic processes associated with state organizations. Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licensees, Report & Order, FCC 84-294, BC Docket 81-496, 98 FCC 2d 746, (1984), ¶21 (“While it is true that stations licensed to state or local jurisdictions are not required to have advisory boards, these stations are often under even more direct public control since state and local officials are accountable for their action or inaction through the electoral process.”).

<sup>11</sup> 47 U.S.C. §396(k)(8)(A).

<sup>12</sup> 47 U.S.C. §396(k)(8)(B).

**B. Public Television Serves the Public Interest by Providing Quality Children's Programming, Enhancing Political Discourse, Providing Programming of Local Interest, Addressing Unserved and Underserved Audiences, and by Being Accessible to Persons with Disabilities**

To further their educational mission and to serve the public interest, public television stations throughout the nation have provided quality children's programming and have made efforts to enhance the quality of political discourse. In addition, public television stations have provided extensive programming of local interest and have partnered with local community organizations. Moreover, public television stations have consistently addressed unserved and underserved audiences and have been leaders in making their programming accessible to persons with disabilities.

**1. Children's Programming**

Public television is exemplary in its commitment to quality children's television programming. Throughout the nation, children turn to public television to learn their alphabet and numbers from *Sesame Street* or to learn about cooperation and kindness from *Mr. Rogers* and *Barney*. In addition to its signature children's programming, public television possesses considerable experience in using technology to educate children, beginning with early childhood development and school readiness. One program that is particularly successful is *Ready to Learn*, a comprehensive programming and outreach service designed to assure school readiness and success for children ages 2-6. Currently, 130 stations, reaching 90 percent of American families, participate in *Ready to Learn*, and over the past four years, public television stations have trained 560,000 parents and caregivers, reaching over 5.25 million children. Moreover, because teachers place a considerable amount of trust in its proven programs, public television is the

number one resource for classroom programming and teacher training, serving 30 million students and 63,000 schools.

Public television's commitment to quality children's television programming will be greatly enhanced by digital technology. For instance, nearly every public television station has plans to multicast at least one channel devoted exclusively to children's educational programming. This can be the newly developed 24-hour national children's channel, entitled *PBS Kids*, or a channel of local educational services. To name only one innovative example of local educational services, all 13 public television stations in Florida are developing the Florida Knowledge Network, which will be a teacher training resource to be delivered directly into the state's classrooms. This service will provide educators with direct access to the highest quality programming, electronic field trips and distance learning. Linked with the state Department of Education and school systems in 17 counties, the network will tailor programming schedules and curriculum for localized use. In addition, datacasting will allow teachers to download lesson plans and educational materials.

## 2. *Political Discourse and Civic Education*

Public television has also been historically committed to enhancing political discourse and fostering citizenship on both a local and national level. To accomplish this mission, public television has been an innovative leader in airing news and public affairs programming and providing candidate time. For instance, the *Democracy Project*, a special initiative between CPB, PBS and local stations, draws Americans back into the democratic process and encourages civic involvement. This initiative included the broadcast of PBS' *Debate Night* in both 1996 and 1998, which featured a national congressional leadership debate among leaders of Congress, coupled with local

congressional debates airing on public television stations across the country.<sup>13</sup> For the 1998 election cycle, local stations broadcast the award-winning *Frontline's* discussion of campaign finance reform, a program called *The 30-Second Candidate*, which explored campaign advertising, and *Class in America*, which explored how social class works in the United States. In 2000, the Democracy Project will again feature a *PBS Debate Night*, as well as three additional projects. First, in *The Choice*, local broadcasts will profile candidates in key local or statewide elections. Second, taking advantage of the digital medium, the *Democracy Project* will include updated online information, instructive materials for teachers and parents, library reading lists and outreach programs. Lastly, public television stations will be breaking new ground by creating innovative broadcast formats, online content, station partnerships and other initiatives to reach out to diverse audiences.<sup>14</sup>

This commitment extends to the digital broadcasting medium. For instance on their digital channels, several public television stations -- such as Mississippi Public Television; South Carolina Educational Television; WUNC-TV, North Carolina; New Jersey Network Public Television; and WBRA, Roanoke, Virginia -- are planning to provide gavel-to-gavel coverage of state legislatures, and the ability to download the texts of proposed bills. Other public television stations, such as KUAT, Tucson, and Louisiana Public Television plan to devote one of four digital channels to cover local, city and county government meetings. These are only a few selected examples of the

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<sup>13</sup> In the inaugural 1996 *Debate Night*, seventy public television licensees broadcast their own local congressional debates and citizen discussions that evening, featuring 212 candidates from 46 Senate races and 166 House races.

<sup>14</sup> See [www.pbs.org/insidepbs/news/election2000.html](http://www.pbs.org/insidepbs/news/election2000.html).

ways in which public television stations plan to use digital technology to enhance political discourse and encourage civic education.

### 3. *Addressing Local Needs*

Because they are intimately connected to the communities they serve, public television stations have historically focused on local issues of concern through the creation of unique locally-produced programming. This includes such news shows, such as *Vermont This Week* and *Newsnight Maryland*, local weather and disaster information,<sup>15</sup> local arts programming and local events coverage. However, a major component of public television's commitment to local issues is adult education. Every year numerous distance learning telecourses are beamed by satellite from colleges and universities to households using the facilities of public television stations. In 1998-99, roughly 500,000 adult degree candidates participated in those courses. Since 1981 more than five million adults have earned college credit using public television's Adult Learning Service telecourses. In addition, public television stations offer services through PBS' *Ready to Earn* initiative, a program that provides young people and

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<sup>15</sup> This focus on station's local communities includes the timely dissemination of local disaster information. For instance, beginning in the fall of 1999, leading up to, during, and after the hurricane and flood that devastated North Carolina, UNC-TV devoted most of its local programs to flood coverage, including its nightly program, *North Carolina Now*. In addition, in conjunction with WILL-AM, Champaign-Urbana, Illinois, WILL-TV produced a television program on tornado safety, and KVCR, San Bernadino's website provides an Earthquake Monitor, including up to the hour records of seismic activity in the region, as well as local weather and news. Although local public television stations have actively and successfully informed their communities of weather and disaster information on a local basis, often such information is distributed on a regional basis when stations are operated as part of a state-wide network. In such situations, even given the advantages of digital technology, transmitting disaster information in a way that pinpoints specific households or neighborhoods at risk, as the Commission suggests, may be technologically infeasible. See In the Matter of Public Interest Obligations of TV Broadcast Licensees, Notice of Inquiry, FCC 99-390, MM Docket No. 99-360 (December 15, 1999), ¶¶18-19 ("NOI"). However some public television stations, such as KSMQ and KTCA in Minnesota, intend on broadcasting a channel devoted to the unique vagaries of Minnesota Weather within its digital multi-casting plans.

workers already on the job with the resources they need to develop workplace skills and pursue rewarding careers. It is targeted to help the nation meet new standards in workforce readiness, adult literacy, and lifelong learning.<sup>16</sup>

Public television's commitment to serving local needs will continue in the digital age. Digital technology promises the development of several innovative approaches to serving local communities. For instance, WTTW, Chicago will be using its digital multicasting capabilities to develop a comprehensive, local information, news and entertainment network called "Network Chicago." It also plans to engage in multicasting partnerships with the Ravinia Jazz Festival and the Art Institute of Chicago. WEDU in Tampa will be working together with Tampa's Museum of Science and Industry to create a local educational experience for children and adults through live presentations of NASA launches, Mars feeds, and interactive exhibits. And WYBE, Philadelphia, plans, as part of its multi-casting efforts, to broadcast a "City TV" channel, in which it plans to broadcast programs that feature the people, places and events that make Philadelphia unique, as well as to cover local city events, political debates, town meetings and school board meetings. Moreover, both Iowa Public Television and Alabama Public Television plan to create multicast channels devoted to issues and events in their respective states. These are only a few examples of how digital

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<sup>16</sup> A particular project of *Ready to Earn* is "Going the Distance," which enables students to earn a degree through college credit telecourses. During 1999, 69 public television stations in partnership with 201 colleges in 41 states offered the service. The first student to earn a college degree using "Going the Distance" courses graduated in May 1998. Busy people with jobs and families, people who a few years ago might never have imagined continuing their education, are now able to advance their lives and their careers through "Going the Distance." GED on TV is also an excellent example of what public television does best. In fact, it's what makes public television unique among broadcasters. Recent figures from the Bureau of Labor Statistics indicate that citizens with a high school diploma or equivalency contribute \$4,980 more per year to their state's economy than do high school dropouts. Produced by the Kentucky Network since 1975 and currently offered in virtually every state, the GED on TV series is therefore having a tremendous impact on the nation's economy. Over five years, more than two million people across the nation have enrolled in GED on TV. The estimated economic impact of these more productive workers is more than \$12 billion.

broadcasting will allow public television stations to expand service to their local communities.

#### 4. *Serving Unserved and Underserved Audiences*

Public television's commitment to address unserved and underserved audiences will continue as the digital age dawns. In the analog world, public television's commitment is second to none. From *Eyes on the Prize* to *Wonders of the African World*, from *Tony Brown's Journal* to *The American Experience: America and the Holocaust*, from *The Irish in America* to *Chicano!*, public television's national programming consistently addresses the issues and concerns of minority and ethnic Americans. Throughout the nation, public television stations have also provided quality local programming that addresses unserved and underserved audiences as well,<sup>17</sup> including several hours of foreign language programming.<sup>18</sup>

Digital technology will enable public television stations to enhance their commitment to serving unserved and underserved audiences. For instance several public television stations have voiced an interest in broadcasting a channel devoted to serving non-English speakers and other minorities. For example, WNET intends to multicast a Spanish-language channel to address the needs and interests of New York City's Spanish community. In addition, WYBE plans to create a separate multicast

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<sup>17</sup> For instance, WTVS has produced programming on Arab-Americans; WGBH and WGBX have produced programming on Armenian and Greek Americans; KLRN, KNME and KCET have produced programming on Hispanic Americans; WHYY have presented programming on Holocaust survivors; KHET has produced programming on Hawaii's native peoples; KUED has produced programs on the Japanese American internment, just to name a few examples.

<sup>18</sup> For instance, each weeknight WYBE broadcasts newscasts from Germany, France and Korea, and on Sundays, WYBE broadcasts programs from India, Greece, Eastern Europe, Asia and other countries. Public television stations have also aired foreign language programming in languages as diverse as Spanish, French, Yup'ik (an Eskimo language), Hmong, Japanese, Russian, and many other languages.



channel called "World TV." This service will be an international channel designed to enrich WYBE's mix of ethnic language programming, including *Greek Spirit*, *Ukrainian Melody*, *Deutsche Welle*, *Korean News*, *Caribbean News Roundup*, and numerous others.

#### 5. *Making Programming Accessible*

Lastly, public television stations are committed to making their programming accessible to all audiences. Accordingly, to reach Americans traditionally excluded from broadcast programming, public television has taken a leadership role in making its programming accessible to deaf and hard-of-hearing persons and persons with visual disabilities.

As the FCC has recognized, public television has been at the forefront in the development of captioning technology and services, with the CPB/WGBH National Center for Accessible Media (NCAM) serving as a resource to public broadcasting in developing accessibility. The Caption Center at WGBH was established in 1971 as the world's first captioning center. Additionally, PBS was instrumental in establishing the National Captioning Institute in Virginia. For approximately nine years thereafter, until 1980, only public broadcasting stations carried captioning. Now, nearly 100 percent of the PBS national programming service carried on public television stations is closed captioned.<sup>19</sup>

In addition to its commitment to closed captioning, public television has been airing described video programming, which allows television programming to be accessible to persons with visual impairments, for more than a decade. The descriptive

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<sup>19</sup> In general, the few PBS programs in the national programming service that are not closed captioned are visually oriented (such as dance performances), non-verbal in nature (such as music concerts), or in foreign languages where subtitles already exist.

video service (“DVS”) was first developed by public broadcasting through WGBH. In 1988, PBS tested DVS nationally throughout its season of *American Playhouse*, and in 1990, PBS aired the first nationally described program *American Playhouse’s* “Sense and Sensibility.” In 1990, public television was honored by the National Academy of Television Arts and Sciences with an award for its development of descriptive video services. The WGBH National Center’s DVS has described more than 1,600 PBS programs, and has provided video description for a variety of regular programming, special programming and cinematic productions.<sup>20</sup> In addition, the National Center reports that currently 169 public television stations, reaching over 80 percent of the nation’s households, have installed the necessary equipment to distribute video descriptions via the secondary audio programming channel.<sup>21</sup> As the Commission has noted, “noncommercial stations provide video description in the absence of Commission rules requiring them to do so.”<sup>22</sup>

With both closed captioning and video description, public television stations and the communities they serve have benefited from the Commission’s flexible approach. Accordingly, APTS supports the extension to the digital medium of all exemptions and forbearances within the closed captioning rules currently applicable to analog services.

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<sup>20</sup> See In the Matter of Implementation of Video Description of Video Programming, Notice of Proposed Rulemaking, MM Docket No. 99-339, FCC 99-353 (November 18, 1999) (hereinafter “NPRM”), ¶2, and “DVS Milestones,” <http://www.wgbh.org/access/dvs/dvsmilestones.html>.

<sup>21</sup> See “Stations Carrying DVS,” <http://www.wgbh.org/wgbh/access/dvs/dvsstations.html>.

<sup>22</sup> NPRM, ¶25, n. 65.

**II. No New Public Interest Obligations Are Required for Public Television Stations Broadcasting in Digital Beyond Those That Already Apply in the Analog World**

APTS asks that the Commission forebear from creating any additional public interest obligations on public broadcasters' use of their digital channels beyond those already required on their analog channels.

First, the imposition of explicit public interest obligations on public broadcasters' digital operations is unnecessary. As discussed above, public television licensees are already bound by statute, Commission rules and CPB policy to serve the public interest needs of their communities. Public television stations have an exemplary track record of public service on their analog channels and have extensive plans to use their digital spectrum to enhance and expand their public interest services.

Second, the full use of digital technology is yet to be determined. To impose explicit public interest obligations on a still developing medium would risk stifling the growth of this exciting new educational tool in unintended ways.

Finally, public stations face a daunting financial challenge both to build digital facilities and to realize their full public service potential. Stations originally requested support from the federal government for one-third of the total \$1.7 billion cost of the transition to digital. The Administration has proposed federal support of only \$450 million – to be authorized and appropriated by two committees over a period of five years. To date, only \$29 million has been made available to public television stations, through grants under the NTIA's Public Telecommunications Facilities Program, for digital conversion and related projects. Stations are also aggressively pursuing alternative funding sources, such as state and local government funding and private contributions. However, adequate funding for digital transmission facilities is far from assured, much less the additional funding needed to provide the range of multicast and

data services that will be possible with the digital technology. For these reasons, any additional public interest obligations on public television's use of the digital spectrum would be unnecessary or, at best, premature.

Granting public television stations forbearance from public interest obligations would be consistent with the Commission's announced policy of flexibility when considering the transition of public television stations from analog to digital. As the Commission has previously stated:

[W]e note our commitment to noncommercial educational television service and our recognition of the high quality programming service noncommercial stations have provided to American viewers over the years. We also acknowledge the financial difficulties faced by noncommercial stations and reiterate our view that noncommercial stations will need and warrant special relief measures to assist them in the transition to DTV. Accordingly, we intend to grant such special treatment to noncommercial broadcasters to afford them every opportunity to participate in the transition to digital television, and we will deal with them in a lenient manner.<sup>23</sup>

Moreover, granting public television stations special status regarding public interest obligations would comport with similar decisions by the Commission in the past. For instance, unlike commercial broadcasters, noncommercial educational television stations are exempt from paying annual regulatory fees.<sup>24</sup> In addition, they are also exempt from paying application fees.<sup>25</sup> Although noncommercial educational television stations are not exempt from the children's programming requirements, they

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<sup>23</sup> In the Matter of Advanced Television Systems and Their Impact on Existing Television Broadcast Service, Fifth Report & Order, FCC 97-116 (April 3, 1997), ¶104. While the Commission in this proceeding limited itself to establishment of the 2003 deadline, it stated that it would consider what additional forms of special treatment might be appropriate for public television stations in subsequent periodic reviews. Id.

<sup>24</sup> See 47 C.F.R. §1.1162(e) and 47 U.S.C. §159(h)(1).

<sup>25</sup> 47 C.F.R. §1.1114(c) and 47 C.F.R. §1.1114(e)(1).

are exempt from the FCC's associated reporting and public information requirements.<sup>26</sup> Lastly, in its recent Notice of Proposed Rulemaking, the Commission has proposed exempting public television stations from its video description requirements, noting that noncommercial stations provide video description in the absence of Commission rules requiring them to do so.<sup>27</sup> Granting forbearance from public interest obligations in light of public television's continuing commitment to the principle would therefore simply be an extension of prior Commission policy.

### **III. Public Interest Obligations Should Not Apply to Ancillary and Supplementary Services Provided by Public Television Stations on Their Digital Spectrum**

In the Notice of Inquiry, the Commission asks whether a licensee's public interest obligations, which apply to broadcast services, should apply to its ancillary and supplementary services.<sup>28</sup> By definition, ancillary and supplementary digital services are services other than free, over-the-air broadcast services.<sup>29</sup>

While section 336(a)(2) of the Communications Act requires the Commission to adopt regulations that allow licensees to offer "such ancillary and supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity,"<sup>30</sup> the same statute makes it clear that ancillary and

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<sup>26</sup> Policies and Rules Concerning Children's Television Programming; Revision of Programming Policies for Television Broadcast Stations, Report & Order, FCC 96-335, MM Docket No. 93-48, (August 8, 1996), n. 119.

<sup>27</sup> Implementation of Video Description of Video Programming, Notice of Proposed Rulemaking, FCC 99-353, MM Docket No. 99-339 (November 18, 1999), ¶25 and n. 65.

<sup>28</sup> NOI, ¶13.

<sup>29</sup> NOI, ¶13, citing the *Fifth Report and Order*, 12 FCC Rcd at 12821, ¶30.

<sup>30</sup> 47 U.S.C. §336(a)(2).

supplementary services are to be considered distinct from a station's broadcast

"program services." For instance, section 336(d) states that:

In the Commission's review of any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, the television licensee shall establish that all of its program services on the existing or advanced television spectrum are in the public interest.<sup>31</sup>

The statute quoted above therefore explicitly distinguishes between broadcast "program services" on one hand and "ancillary and supplementary services" on the other hand. This distinction is further supported by section 336(b)(3), which states that "no ancillary or supplementary service shall have any right to carriage under section 614 or 615...."<sup>32</sup> That is, unlike ordinary broadcast program services -- which are free, over-the-air services directed to the general public -- ancillary and supplementary services are viewed by Congress as so distinct in nature as to make them ineligible for must-carry rights.<sup>33</sup>

Public television stations have asked the Commission in a separate proceeding to afford them flexibility to use ancillary and supplementary capacity for revenue-generating opportunities in support of their public service, mission-related objectives.<sup>34</sup>

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<sup>31</sup> 47 U.S.C. §336(d).

<sup>32</sup> 47 U.S.C. §336(b)(3).

<sup>33</sup> The term "broadcasting" is defined in the Communications Act as "the dissemination of radio communications intended to be received by the public." 47 U.S.C. § 153(6). The Commission has further clarified that the term "broadcasting" "refers only to those signals which the sender intends to be received by the indeterminate public." Subscription Video, 2 FCC Rcd 1004 (1987), aff'd sub nom. National Association for Better Broadcasting v. FCC, 849 F.2d 665 (D.C. Cir. 1988). See also In the Matter of Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Television Licensees, Notice of Proposed Rule Making, MM Docket 98-203, FCC 98-304, (1998) ¶37 (tentatively concluding that section 399B does not apply to subscription services on DTV channels, because such services do not constitute "broadcasting"). NTIA also currently defines broadcast as "the distribution of electronic signals to the public at large using television (VHF or UHF) or radio (AM or FM) technologies." 15 C.F.R. §2301.2 (January 1, 1998).

<sup>34</sup> Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees, MM Docket No. 98-203, Comments of the Association of America's Public Television Stations (Feb. 16, 1999).

To the extent a public television station has excess digital capacity – *i.e.*, capacity that it does not need for its basic broadcast service and other mission-related purposes – it could use that excess capacity to provide ancillary or supplementary services for remuneration. Possibilities might include the provision of data services, leasing excess capacity to a third party, such as a public school or a paging service, or engaging in joint ventures with third parties to offer such services as subscription video.

The imposition of public interest requirements on public television's ancillary and supplementary services would serve no public interest purpose. Since that portion of the digital channel, by definition, is not addressable to the general public and is not afforded access to the public through cable carriage, it would be a waste of spectrum to require that public interest services be included in ancillary and supplementary services. Rather, affording public broadcasters the widest flexibility to use that capacity for revenue generating purposes will maximize the revenue stations can generate to support their primary program services that will reach the general public.

This will not prevent public broadcasters from using their digital capacity to transmit data and other services that are educational or mission related, which APTS considers as part of the stations' primary program services. Public stations that have begun their digital transmission are currently transmitting data with their programming that is designed to enhance the educational content of the programs. For example, the recent digital broadcast of *Frank Lloyd Wright* contained data streamed with the program that allowed viewers, after the program, to tour and learn more about the various buildings designed by Wright. Public broadcasters plan to transmit lesson plans, teacher guides, Internet content, teacher training and other educational content with its educational programming. In separate comments on digital carriage rules, APTS has asked the Commission to consider these types of data transmissions as part of

the primary educational service of the station, not as ancillary or supplementary services.

In any case, there is no question that any ancillary or supplementary services offered by public television stations will be distinct and completely separate from their free, over-the-air noncommercial educational service that will be available to all. Therefore, the Commission should refrain from applying public interest rules to the ancillary and supplementary services offered by public television stations.

**IV. APTS Supports a New Reserved Educational Channel, So Long As It Is Sufficiently Funded and Existing Public Television Stations in the Community Have a First Opportunity to Operate These Channels**

The Commission seeks comment on the Advisory Committee Report's recommendation that out of the returned analog spectrum, one new 6 MHz channel for each viewing community be reserved for noncommercial purposes, including educational programming directed at minority groups and other underserved segments of the community.<sup>35</sup> As the Committee's report makes clear, a reservation of additional spectrum for noncommercial, educational purposes would be a wise investment in Nation's future.

The opportunity for digital television to improve student achievement has extraordinarily high stakes for our Nation. The acquisition and use of knowledge is a major resource for our society in the coming century and is pivotal for our quality of life, our economic development, our democracy, and indeed our security. The Nation's success depends upon how effectively all members of our society are prepared to use information technologies, which in turn means that the proficiency of our citizens depends upon the quality of our educational offerings and the capacity of

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<sup>35</sup> NOI, ¶32. See also Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, *Charting the Digital Broadcasting Future: Final Report of the Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters* (1998), pp. 50-52. The report is available at [www.ntia.doc.gov/pubintadvcom/pubint.htm](http://www.ntia.doc.gov/pubintadvcom/pubint.htm).



students to utilize information technologies for educational ends. We put our children at a competitive disadvantage in the global economy if we do not invest wisely in educational resources.<sup>36</sup>

Therefore, the Committee recommended that when the existing analog channels are to be returned to the government, one 6 MHz channel in each viewing area should be reserved for noncommercial educational purposes. The Committee defined such purposes as preschool, elementary, secondary, and post-secondary education, lifelong learning, distance learning, literacy, vocational education, children's educational programming, as well as public affairs, multicultural, arts and civics programming, including other programming directed to the educational needs of underserved communities.<sup>37</sup> This is precisely the mission to which public television stations across the nation are committed.

Given their current public service, connection to local communities, history of commitment to public service and expertise as broadcasters of educational services, public television stations are the natural and best candidates to operate stations on these new channel allotments. For instance, public television stations could provide the following services with a second channel in their community.

- Partnerships with local schools, colleges, universities and other educational institutions to engage in an even broader range of educational services;
- Partnerships with libraries, museums and other cultural institutions to expand distribution of digital information to local communities;
- Provision of greater access to telecommunications services for unserved and underserved populations who, because of economic, geographic, physical, cultural or language barriers, have been left behind by the commercial marketplace;

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<sup>36</sup> Id. at p. 51.

<sup>37</sup> Id.

- Provision of more free air time for both local and national political candidates and parties;
- Partnerships with state and local governments to provide greater access to local civic affairs; and
- Providing opportunities for independent program producers to expand their offerings to the community.

Accordingly the Advisory Committee concluded, and public television stations concur, that the Commission should “give the first opportunity to claim and run each educational channel to the local public television station or stations.”<sup>38</sup> With the breadth of operational expertise and existing infrastructure centered upon educational services to the public, public television is best positioned to partner with libraries, schools, and nonprofit local groups to develop and deliver digital programs and services on a new 6 MHz channel reserved in each community. In addition, giving public television stations first access to the new reserved 6 MHz channel would be consistent with the Commission’s policy of efficient spectrum management. First, it would ensure that reserved channels not lie fallow. Second, it would allocate a scarce resource to those entities with the greatest ability to efficiently and effectively use the resource for the public interest. Third, it will help ensure that services that are diverse and distinct from existing public broadcast services will be provided to the communities.

However, as the Committee has observed, “New channels devoted to education can be of enormous benefit to the country if they have adequate financial backing.”<sup>39</sup> Accordingly, the Committee recommended that public stations be sufficiently funded in

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<sup>38</sup> Id., p. 51.

<sup>39</sup> Id., p. 52.

order to achieve their potential in terms of providing worthwhile services on a new reserved 6 MHz channel in furtherance of the public interest.

APTS strongly agrees with the Committee's recommendation, and only endorses the allocation of an additional educational channel in each community if it is accompanied by an adequate, secure and permanent source of funding to program and operate the channel. As the Committee recognized, public broadcasting already faces a major challenge to fulfill its potential in the digital age on its existing channel. In light of the costs of digital conversion as well the costs of producing digital programming, the Committee urged Congress "to consider ways to provide enhanced funding for public broadcasting in the digital era, and to create a trust fund to make such funding assured and permanent . . . ." <sup>40</sup>

Given that public television is currently struggling to raise sufficient funding to make optimal use of the digital capacity already reserved for educational purposes, it does not serve the public interest to allocate additional capacity for educational services without adequate funding.

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<sup>40</sup> Id at 50. While we recognize that the creation of a trust fund to ensure a permanent and adequate source of funding for public television in a digital age is beyond the Commission's authority, we strongly support the Committee's recommendation. We urge the Commission, as a matter of public policy, however, to express support for the Committee's recommendation to Congress. There is no better way to guarantee and advance the public interest uses of the reserved digital spectrum than to ensure the long-term financial security of public broadcasting.

## Conclusion

Because public television stations exist to serve the public interest, the Commission should, as it has in the past, accommodate this unique mission, as well as the financial constraints under which public television stations operate, and not create any additional public interest obligations on public television stations beyond those already required in the analog world. In addition, APTS contends that public interest obligations should not apply to ancillary and supplementary services because by definition these services are not part of the licensee's free over-the-air broadcast service available to the general public. Lastly, APTS supports the creation of an additional reserved channel devoted to educational uses in each community. However, building and operating facilities for the channels must be sufficiently funded, and local public television stations should be given the first opportunity to operate these channels.

Respectfully submitted,



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